

**UNIVERSITY OF ILLINOIS
URBANA-CHAMPAIGN SENATE**

Prefiled Resolution

RS.16.04 Resolution on the Discriminatory Nature of the New University of Illinois Criminal Background Check Policy

WHEREAS the University of Illinois Board of Trustees has adopted a policy making all University employment offers after 5 November 2015 contingent on successful candidates submitting to and passing a mandatory criminal background check; and

WHEREAS the University of Illinois *Statutes* (IX.6.d.6) state that severe sanctions other than dismissal should only occur as a result of conviction for a felony “that is clearly related to the performance of University duties or academic activities”; and

WHEREAS the University, through its “Non-Discrimination Statement” and other resulting documents, declares its commitment to “equality of opportunity” requiring decisions involving “employees be based on merit and be free from invidious discrimination in all its forms”; and

WHEREAS the Campus statement of commitment to diversity and Affirmative Action/Equal Employment Opportunity Policy declares that in order to “embrace and value diversity and inclusivity... all qualified applicants will receive consideration for employment without regard to...criminal conviction history. Illinois welcomes individuals with diverse backgrounds, experiences, and ideas”

(http://diversity.illinois.edu/EEO_Statement.pdf); and

WHEREAS the Director of Academic Human Resources, Deborah Stone, stated before the Senate on April 6th that “A criminal conviction is not an automatic bar from employment”; and

WHEREAS the Illinois law on arrest records (775 ILCS 5/2-103) considers “fact of an arrest or criminal history record information ordered expunged, sealed or impounded” a “civil rights violation” if used as the basis for employment decisions; and

WHEREAS the Office of Diversity, Equity, and Access and the Campus Administrative Manual states, in the “Policy and Procedures for Addressing Discrimination and Harassment at the University of Illinois at Urbana-Champaign” document, that decisions involving employees “be free from invidious discrimination”; and

WHEREAS the case of *Griggs v. Duke Power*, a basis for the “US Equal Employment Opportunity Commission [EEOC] Enforcement Guidance” (No. 915.002), determined that policies that may not inherently discriminate against a protected class are considered to be guilty of disparate impact discrimination if that policy “has the effect of disproportionately screening out” protected groups (including racial groups) and are therefore “fair in form, but discriminatory in operation” and that decisions based on criminal records poses a “disparate impact liability”

(http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf); and

WHEREAS the EEOC “US Equal Employment Opportunity Commission [EEOC] Enforcement Guidance” (No. 915.002) document reflects the fact that the EEOC acknowledges that arrest and conviction records can violate prohibition against employment discrimination, further stating that even if the policy is job related, a decision can still be considered a form of disparate impact discrimination if there is a “less discriminatory” alternative “the employer refused to adopt”; and

WHEREAS the criminal justice system in the United States displays unwarranted racial disparities in arrest and convictions (www.nccdglobal.org/sites/default/files/publication.../created-equal.pdf); and

WHEREAS the Office of Federal Contract Compliance Programs states that to “exclude people from employment based on the mere existence of a criminal history record and that do not take into account the age and nature of an offense, for example, are likely to unjustifiably restrict the employment opportunities of individuals with conviction histories. Due to racial and ethnic disparities in the criminal justice system” policies based on criminal history record “are likely to violate federal antidiscrimination law” (http://www.dol.gov/ofccp/regs/compliance/directives/Dir306_508c.pdf); and

WHEREAS the “Senate Committee on Equal Opportunity and Inclusion Advice on Background Check Implementation Plan,” as presented to the Senate on October 19, 2015, stated that “A policy that examines, and an implementation plan that considers, the relation of previous convictions to suitability for positions in the context of a system of mass incarceration that implicates people of color at vastly higher rates than the rest of the population cannot be anything but discriminatory no matter how carefully the implementation plan is designed”; and

WHEREAS the AAUP “Verification and Trust: Background Investigations Preceding Faculty Appointment” states that “Inquiry into either type of information,” including criminal records, litigation history, and court judgments, “by a third party is commonly understood to be an intrusion upon an individual’s privacy and we take it to be such,” that “The mere fact of an applicant’s having been swept up into the criminal justice system is not, by itself, relevant to his or her suitability for a faculty position” and the rise in or expansion of background checks used to investigate candidates for professional appointments “has arisen despite the absence of any systematic study of the need for the information such checks might produce” (<http://www.jstor.org/stable/4025613>); and

THEREFORE be it resolved by the Senate of the Urbana-Champaign campus that it is inequitable to include considerations of arrest or conviction record of an otherwise successful applicant into the decision-making process for the offer of a faculty, staff or civil service position at the University of Illinois and that the new mandatory background check policy constitutes employment discrimination; and

BE IT FURTHER RESOLVED, that the Senate Executive Committee Chair shall forward this resolution to the UI President, UIUC Chancellor, UIUC Provost, and Director of Illinois Human Resources.

Respectfully submitted and co-sponsored by:

A. Kay Emmert, English
Teresa Barnes, History
Jessica Greenberg, Anthropology
Mark Steinberg, History
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Jesse Ribot, Geography & Geographic Information Science
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